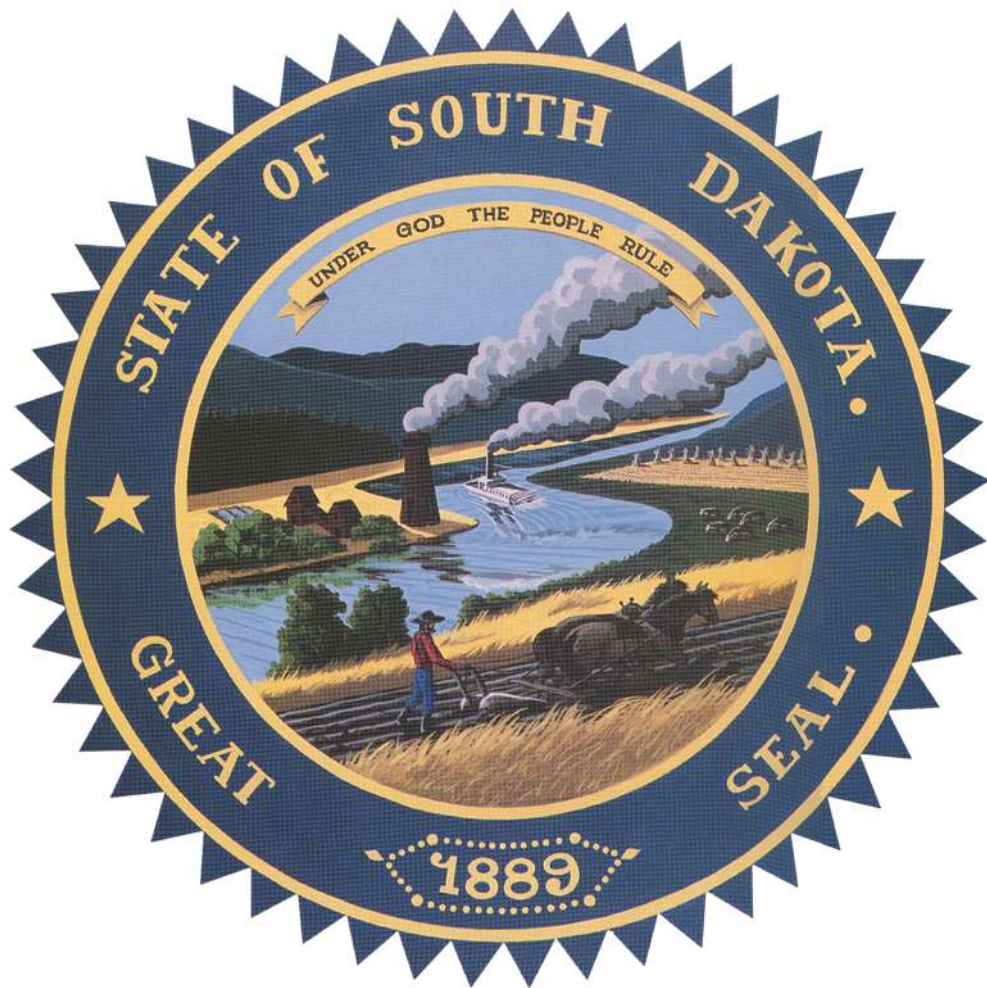


# Municipal & School Recount Manual



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## RECOUNTS

Recounts occur when the official canvassed results of a race are within a certain margin of votes. If this margin of votes is met, the recount will proceed if requested by the necessary person(s). A recount procures a speedy and correct determination of the true and actual count of all ballots cast at an election and which ballots are valid. ([SDCL 12-21-1](#))

If a tie vote occurs, there will be an automatic recount. ([SDCL 12-21-16](#))

A recount is a second counting of the ballots. It does not address possible legal deficiencies in the conduct of an election. These would be dealt with in an election contest through the court system.

Recounts are governed by Codified Law and Administrative Rule.

There are seven different types of recounts. The following is a listing of the various recounts that can occur, the process to obtain the recount, and the Codified Law and/or Administrative Rules for the type of recount.

### Municipal Candidate Recount

**Purpose:** This type of recount is used for a specific municipal candidate's race.

**Office Sought:** Mayor, Alderman, City Council Member, City Commissioner, Trustee, any other municipal office

**Involved Parties:** Candidate, Municipal Finance Officer, Recount Board

**Criteria:**

- Must be a specific municipal candidate.
- Tied election or election margin of five (5) votes or less or,
- Election margin not exceeding two percent of total votes cast for all candidates.
  - For example, 5,000 total votes are cast,
    - 2% of 5,000 ( $5,000 \times 0.02$ ) = 100
  - Thus, the election must be within 100 votes to request a recount (round down if needed).

**Who Petitions:** A tied or losing candidate.

**Recount Request:** Written request.

**File With:** Municipal Finance Officer

**Deadline:** Within five (5) days after the official canvass (*do not count the day of the canvass in the five days nor do you count weekends or holidays*; [SDCL 12-1-17](#))

- Example: If the official Canvass is on a Tuesday, then by 5pm on the following Tuesday the recount petition is due.

**Code Cited:** [SDCL 9-13-27.2](#) & [9-13-27.3](#)

## **Steps to Filing this Petition**

### **Candidate**

1. Writes request for recount,
2. Submit the request to the municipal finance officer.
3. Each candidate selects a member for the recount board.
4. Each candidate shall agree of the recount member appointed by the finance officer

### **Municipal Finance Officer**

1. Shall set the time and place for the recount.
2. If the recount board consists of an even number of persons, the finance officer shall appoint one additional recount member that mutually agreed by each candidate
3. Delivers the ballot box containing the ballots to the recount board
4. If a tie exists after the recount the finance officer shall fix a time and place for the drawing of lots, giving reasonable notice of the time and place to each of the tied candidates. [\(9-13-27.2\)](#)

### **Recount Board**

1. Shall proceed expeditiously until completed
2. Questions on the recount shall be determined by majority vote of the recount board
3. Compensation for recount boards shall receive compensation in the amount of twenty-five dollars per day or in an amount equal to the state minimum hourly wage, whichever is greater. [\(SDCL 12-21-4\)](#) Note: recount referees are not used in municipal or school recounts.

## **Municipal Ballot Question Recount**

**Purpose:** This type of recount is used for a municipal ballot question.

**Involved Parties:** Voters, Municipal Finance Officer, Recount Board

**Criteria:**

- Must be a municipal ballot question.
- Election margin not exceeding two percent of total votes cast for that question.
  - For example, 5,000 total votes are cast,
    - $2\% \text{ of } 5,000 (5,000 \cdot .02) = 100$
  - Thus, the election must be within 100 votes to request a recount (round down if needed).

**Who Petitions:** Three (3) registered voters of the municipality.

**Petition:** Petition [ARSD 5:02:19:10](#)

**File With:** Municipal Finance Officer

**Deadline:** Within five (5) days after the official canvass (*do not count the day of the canvass in the five days nor do you count weekends or holidays*; [SDCL 12-1-17](#))

- Example: If the official Canvass is on a Tuesday, then by 5pm on the following Tuesday the recount petition is due.

**Code Cited:** [SDCL 9-13-27.2](#) & [9-13-27.3](#)

### **Steps to Filing this Petition**

#### **Voters**

1. Three (3) registered voters file the request for recount [ARSD 5:09:19:10](#)
2. Submit request to the municipal finance officer.

#### **Municipal Finance Officer**

1. Shall set the time and place for the recount.
2. Appoints the recount board consisting of one person on each side of the question and one person mutually agreed upon by the other two appointed.
3. Delivers the ballot box containing the ballots to the recount board.
4. If a tie exists after the recount, the finance officer shall fix a time and place for the drawing of lots, giving reasonable notice of the time and place to each of the tied candidates. ([SDCL 9-13-27.2](#))

#### **Recount Board**

1. Shall proceed expeditiously until completed.
2. Questions on the recount shall be determined by majority vote of the recount board. ([SDCL 9-13-27.3](#))
3. Compensation for recount boards shall receive compensation in the amount of twenty-five dollars per day or in an amount equal to the state minimum hourly wage, whichever is greater. ([SDCL 12-21-4](#)) Note: recount referees are not used in municipal or school recounts.

### **School Board Candidate Recount**

**Purpose:** This type of recount is for a specific school board candidate's race.

**Office Sought:** School Board Member

**Involved Parties:** Voters, Business Manager of the school district, Recount Board

**Criteria:**

- Must be a specific school board candidate.
- Election margin not exceeding two percent of total votes cast for all candidates.
  - For example, 5000 total votes are cast,
    - 2% of 5000 ( $5000 \times 0.02$ ) = 100

- Thus, the election must be within 100 votes to request a recount (round down if needed).

**Who Petitions:** A tied or losing candidate.

**Recount Request:** Written request.

**File With:** School Business Manager

**Deadline:** Within five (5) days after the official canvass (*do not count the day of the canvass in the five days nor do you count weekends or holidays; [SDCL 12-1-17](#)*)

- Example: If the official Canvass is on a Tuesday, then by 5pm on the following Tuesday the recount petition is due.

**Code Cited:** [SDCL 13-7-19.1](#) & [13.-7-19.2](#)

### **Steps to Filing this Petition:**

#### **Candidate**

1. Losing candidate fills out [petition](#).
2. Petition must be notarized.
3. Files petition with the business manager.
4. Each candidate selects a recount board member.

#### **Business Manager**

1. Shall set the time and place for the recount.
2. Appoints the recount board consisting of one person on each side of the question and one person mutually agreed upon by the other two appointed.
3. If the recount board consists of an even number of persons, the finance officer shall appoint one additional recount member that mutually agreed by each candidate.
4. Delivers the ballot box containing the ballots to the recount board.
5. If a tie exists after the recount the finance officer shall fix a time and place for the drawing of lots, giving reasonable notice of the time and place to each of the tied candidates. ([SDCL 13-7-19-.1](#))

#### **Recount board**

1. Shall proceed expeditiously until completed.
2. Questions on the recount shall be determined by majority vote of the recount board ([SDCL 13-7-19.2](#))
3. Compensation for recount board shall be paid out of the general fund of the school district and the compensation is set by the school board, to be not less than the minimum wage established [SDCL 60-11-3](#). ([SDCL 13-7-19.4](#))

## School Ballot Question Recount

**Purpose:** This type of recount is used for a school district ballot question.

**Involved Parties:** Voters, Business Manager of the school district, Recount Board

**Criteria:**

- Must be a school district ballot question.
- Election margin not exceeding two percent of total votes cast for that question.
  - For example, 5000 total votes are cast,
    - 2% of 5000 ( $5000 \times 0.02$ ) = 100
  - Thus, the election must be within 100 votes to request a recount (round down if needed).

**Who Petitions:** Three (3) registered voters of the school district.

**Petition:** Petition [ARSD 5:02:19:10](#)

**File With:** School Business Manager

**Deadline:** Within five (5) days after the official canvass (*do not count the day of the canvass in the five days nor do you count weekends or holidays*; [SDCL 12-1-17](#))

- Example: If the official Canvass is on a Tuesday, then by 5pm on the following Tuesday the recount petition is due.

**Code Cited:** [SDCL 13-7-19.3](#)

### Steps to Filing this Petition

#### **Voters**

1. Three (3) voters fill out the [petition](#).
2. Petition must be notarized.
3. Files petition with the business manager.

#### **Business Manager**

1. Shall set the time and place for the recount.
2. Appoints the recount board consisting of one person on each side of the question and one person mutually agreed upon by the other two appointed.
3. Delivers the ballot box containing the ballots to the recount board.
4. If a tie exists after the recount, the finance officer shall fix a time and place for the drawing of lots, giving reasonable notice of the time and place to each of the tied candidates. ([SDCL 13-7-19-.1](#))

## Recount board

1. Shall proceed expeditiously until completed.
2. Questions on the recount shall be determined by majority vote of the recount board ([SDCL 13-7-19.2](#))
3. Compensation for recount board shall be paid out of the general fund of the school district and the compensation is set by the school board, to be not less than the minimum wage established [SDCL 60-11-3](#). ([SDCL 13-7-19.4](#))

## Recount Board Procedures

- The recount board may recess from time to time, however, the recount shall not reconvene nor shall the ballots be handled until the appointed time for reconvening. Notice of time and place of meeting shall be given to all three members of the recount board.
- The finance officer or school business manager shall be responsible for providing administrative support and staff for the recount board.
- The finance officer or school business manager shall take precautions to insure against tampering with the ballots.
- The recount shall proceed as expeditiously as reasonably possible until completed. (SDCL 12-21-25)

## Recounting of Ballots

- The recount board follows [ARSD 5:02:16](#)- for the recounting hand counted paper ballots (not optical scan ballots). If hand counted paper ballots were used in the election, they will follow these procedures for the recount:
  - The recount board, before assuming its duties, shall execute the oath of office which is located in the back of this book.
  - In the presence of all persons desiring to attend the vote counting, the precinct election board or counting board shall immediately proceed to publicly count the votes received at the polls and shall continue without adjournment until the count is completed. The precinct election board or counting board may not exclude or prohibit any member of the public from witnessing any portion of the vote counting, so long as that person's conduct is not disruptive.
  - The precinct election board or the counting board shall use the tally sheets prescribed by § [5:02:17:07](#) in the vote counting.
  - 5:02:17:07. Tally sheets. The tally sheets must be ruled by horizontal and perpendicular lines to form squares of suitable size to contain five tally marks each, four of which may be upright and the fifth crossing the others at an oblique angle. Each fifth perpendicular line in the ruling must be red, so that five squares for tally marks are contained between each two red lines. In a perpendicular column at the left margin of each tally sheet sufficient space

must be left to legibly print or write in ink the names of all candidates and all questions submitted to the electors at the election, in the same order as on the official ballots used in the election. At the extreme right margin of the tally sheet there must be a perpendicular column with sufficient space to label the column at the top of the tally sheet as follows: "Total Votes."

- 5:02:16:05. The counting board shall begin the vote count by counting the ballots as prescribed in §§ [5:02:16:06](#) to [5:02:16:08](#), inclusive. If the ballot count does not agree with the number of voters in the pollbook, a comparison of the voters in the pollbook and the registration list shall be made and any mistakes corrected. If a mistake is made otherwise, the board by majority vote shall decide.
- 5:02:16:06. Opening the ballot box. The ballot box shall then be opened and the ballots taken out, sorted so that all ballots on certain candidacies and issues are separately identified, and counted by the members of the counting board unopened, except to ascertain if each ballot is single.
- 5:02:16:07. Folded ballots separated. If two or more ballots are found folded together presenting the appearance of a single ballot, the ballots shall be laid aside until the count of the ballots is completed. If, upon the comparison of the count of the pollbook and after considering the appearance of the ballots, a majority of the counting board is of the opinion that the folded ballots were voted by one voter, the ballots shall be stapled together and endorsed as "duplicate ballot of one voter not counted."
- 5:02:16:08. Duplicate ballots. For the purpose of determining the proper number of ballots in the box, any ballots folded together determined to be duplicate ballots of one voter shall be counted as a single ballot. There are two types of duplicate ballots as follows:
  - (1) If a voter was given two or more identical ballots stuck together and voted only one of them, the voted ballot shall be counted. The election or counting board will find the duplicate ballots folded together in the ballot box with the ballot stamp on the back copy and the votes marked on the top copy; and
  - (2) If a voter was given two or more identical ballots stuck together and voted more than one of them, none of the voted ballots may be counted.
- 5:02:16:10. Unstamped ballots. In the counting of the official vote, any ballot not covered by § 5:02:16:07, 5:02:16:08, or 5:02:16:09.01 which is not endorsed by the official stamp is void and may not be counted. All such ballots shall be endorsed "unstamped ballot."
- 5:02:16:11. Separation of ballots. The counting board shall next proceed to further separate the ballots.
- 5:02:16:12. Order of vote counting. The counting of votes for each candidate shall be in the same order as the candidates appear on the ballot.



- 5:02:16:14. Scrutiny of ballots by counting board. At least two precinct deputies of the counting board of opposite political parties shall scrutinize each ballot to determine the vote on that ballot. The precinct superintendent shall break any tie on a ballot.
- 5:02:16:15. Tally of ballots. As the vote is announced, one counting board member shall make the required mark on the tally sheet in the pollbook and another counting board member shall make the required mark on the duplicate tally sheet.
- 5:02:16:17.01. Write-in votes not counted. As each ballot is being examined to determine how the vote was cast for each office, the counting board shall determine if any write-in was placed on the ballot. The write-in may not be counted as a vote but all other valid marks shall be counted as votes.
- 5:02:16:17.02. Counting imperfectly marked paper ballots. A mark that touches the circle or square on a paper ballot shall be counted as a vote; any mark that does not touch the circle or square and is not in the circle or square may not be counted as a vote.
- 5:02:16:21. Voter's intent to be determined. If in accordance with this chapter it is impossible to determine the voter's intent on any ballot or part of a ballot, that portion of the ballot shall be void and shall not be counted as to those races for which the voter's intent cannot be determined.
- All questions arising on such recount shall be determined by majority vote of such board, and at least two members of such board shall be present at all times. When only two members are present, the presence of the third member may be required for the purpose of determining any disputed question on which the two members present are unable to agree. [\(SDCL 12-21-23\)](#)
- The recount board is authorized to make a determination whether any provisional ballots or absentee ballots which were determined not to be countable shall be counted, and those votes shall be added to the recount tally. [\(SDCL 12-21-24\)](#)
- If the city or school is using automated tabulating equipment, they will follow the procedures below [\(ARSD 5:02:09:05\)](#):
  - Board examines each ballot to determine if official stamp has been placed on the ballot and may not count any vote on an unstamped ballot;
  - The recount board shall review ballots for proper marking procedure according to the voting instructions. The recount board shall determine the voter's intent based on the standards found in [ARSD 5:02:09:22](#):
    - 5:02:09:22. Counting imperfectly marked optical scan ballots. A mark that touches the oval on an optical scan ballot shall be counted as a vote; any mark that does not touch the oval and is not in the oval may not be counted as a vote.

- The recount board shall review each ballot to determine if there are any write-in votes. Any write-in vote may not be counted but all other votes for which the voter's intent can be determined shall be counted;
- The recount board shall examine the ballots reviewed by the resolution board to determine the correctness of the initial rejection or duplication. The recount board shall rule on whether each mark is to be counted or rejected according to § [5:02:09:22](#);
- The recount board shall test the automatic tabulating equipment according to § [5:02:09:01.02](#). The board may conduct additional tests of the equipment including a comparison with hand-counted results from a precinct;
  - 5:02:09:01.02. Test of tabulating equipment. The person in charge of the election shall conduct tests of the automatic tabulating equipment as required in SDCL [12-17B-5](#) and [12-17B-12](#). The tests shall be conducted by processing a preaudited group of ballots in a test deck marked to record a predetermined number of valid votes for each candidate and each measure. A tally sheet shall be created prior to the machine count to fully show how the sample of ballots is marked and what the machine vote totals must be to prove an errorless count. If more than one ballot is used in the election, a test deck shall be made for each ballot that is unique in any way. The test deck(s) shall include for each office and ballot question:
    - (1) One or more ballots with a vote for each candidate and each side of a ballot question;
    - (2) One or more ballots which have votes in excess of the number allowed by law for each office and question; and
    - (3) One or more ballots which contain an undervote.

At least twenty-five test ballots shall be included in the total of all test decks. Individual test decks for individual ballots shall be of sufficient size to prove the accuracy of the system. If absentee ballots are to be received folded, at least ten percent of the test ballots in any individual test deck shall be similarly folded. The person conducting the test of the tabulating equipment shall date and sign the printout, verifying that the results of the machine's printed paper vote totals exactly match the tally sheet from which the sample of ballots was marked. The test deck(s), tally sheet, and signed printout must be secured and retained with the official ballots.

The test procedure shall include the processing of at least one ballot completely blank to verify that the machine is correctly configured according to SDCL [12-17B-13.1](#).

If more than one tabulating machine is to be used in the election, each machine shall be fully tested according to the ballot(s) which each machine will be used to count in the election.

In addition to these tests, any test deck may be processed any time before or after completion of the official count.

- The recount board shall count the ballots with the automatic tabulating equipment. A hand count may be conducted to verify the accuracy of the count by the automatic tabulating equipment. If any discrepancy is found, the discrepancy shall be resolved before the recount is concluded. If any vote cannot be accurately counted by the automatic tabulating equipment but can be hand counted, the hand count tally of that vote shall be added to the count by the automatic tabulating equipment;
- Any question arising on the recount shall be determined by majority vote of the recount board; and
- The recount board shall certify the new returns as printed by the automatic tabulation equipment or as hand counted as the "Official Returns" for the election by completing the Certificate of Recount as provided in § [5:02:19:08](#). This form can be found at the back of this manual.

### **Recessing and Adjourning**

- 12-21-26. Candidates' right to witness recount--Witnesses to recount on submitted question. Each candidate for any office, nomination, or position involved in any such recount may appear, personally or by a representative, and shall have full opportunity to witness the opening of all ballot boxes and the count of all ballots. If the recount is upon a referred or submitted question, any registered voter of the state favoring either side as to such question may be present and represent such side, and if more than one person favoring such side is present, they shall designate one of their number to represent such side, who shall have full opportunity to witness the opening of all ballot boxes and the recount of all ballots. ([SDCL 12-21-26](#))
- Board may recess, however, the recount shall not reconvene nor ballots handled until the appointed time for reconvening. (ARSD [5:02:19:01](#))

### **Disputed Ballots**

- If any such candidate or any such representative, protests the ruling of such board as to any ballot, such ballot shall be adequately identified by the board as an exhibit and segregated by the board as a disputed ballot. ([SDCL 12-21-27](#))
- At the conclusion of the recount of each precinct, the undisputed ballots shall be returned to the ballot box and resealed, and the disputed ballots, if any, shall be certified pursuant to § 12-21-33. ([SDCL 12-21-31](#))

## Completion of Recount

1. The board completes Certificate of Recount which lists both the results from the official canvass and the results from the subsequent recount. ([ARSD 5:02:19:08](#) & [SDCL 12-21-32](#)). These forms can be found in the back of this manual.
2. The Certificate of Recount is maintained in your office.
3. The finance officer or school business manager will seal up the ballots and keep them sealed for sixty days pursuant to SDCL 12-20-31:

SDCL 12-20-31. Destruction of ballots and pollbooks--Period for which held--Pending recount or contest. The officer in charge of an election may destroy voted ballots and pollbooks from a nonfederal election sixty days following the election at which such ballots were voted. However, they may not be destroyed if any recount or contest of such election is pending. The officer in charge of an election may destroy voted ballots, pollbooks and all other election material relating to a federal election twenty-two months after the election at which the ballots were voted. For the purpose of this section, a federal election is any election to nominate or elect persons to the United States Congress or other national elected position, including national issues or questions. If a ballot is used for a federal election and a state or local election, the ballots and all other election material shall be maintained for twenty-two months. All federal election material may be removed from the ballot box if it is maintained in such a manner as to guarantee the safety and integrity of such material.

4. Any disputed ballots shall be recorded on the Certificate of Disputed Ballots ([ARSD 5:02:19:09](#)) and delivered to the person in charge of the election along with the disputed ballots. ([SDCL 12-21-33](#)) This form can be found in the back of this manual.
5. The governing board of the municipality or the school board will canvass the results of the recount.
6. If such corrected abstract by the recount board shows no change in the result as previously found on the official returns, no further action shall be taken. But if there is a change in such result, a new certificate of election or nomination shall be issued to each candidate found to have been elected or nominated as the case may be, which certificate shall be signed by at least two members of such board, and shall set forth the nomination or election of such person as to such office or position. ([SDCL 12-21-37](#))

## Additional Information Upon Recount Completion

- Any certificate of nomination or election issued under the provisions of this chapter shall have the effect of and shall be recognized as superseding and rendering null and void any certificate of election or nomination previously issued. The holder of any certificate of nomination or election issued under this chapter shall have the same identical rights as if he held the original certificate of nomination or election and no recount had been had. ([SDCL 12-21-41](#))

- The determination, as provided in this chapter, of a corrected and changed result upon a recount as to any referred or submitted question shall have the effect of superseding and rendering null and void the result as found upon the original canvass. [SDCL 12-21-42](#).
- Whenever the ballots cast in any precinct have been recounted as to any office, nomination, petition, or question, such ballots **shall not thereafter**, except as specifically provided in § [12-21-45](#), be recounted as to the same office, nomination, position, or question. ([SDCL 12-21-44](#))
- When a tie vote between candidates is found to exist after a recount has been performed, it shall be the duty of the person in charge of the election to fix a time and place for the drawing of lots by the candidates involved in the tie vote, giving reasonable notice of the time and place to each of the candidates. Each such candidate may appear at the time and place designated either in person or by a representative, the candidate or candidates entitled to the certificate or certificates of nomination or election shall be determined by drawing of lots in the manner directed by such authority, and the certificate or certificates of nomination or election shall be issued accordingly. ([SDCL 12-21-43](#))

## SDCL 12-21: RECOUNTS

<a href="#">12-21-1</a>	Purpose of chapter--Liberal construction.
<a href="#">12-21-2</a>	Composition and appointment of county recount board--Oath to act in good faith and with impartiality.
<a href="#">12-21-3</a>	Notice of appointment and time and place of recount--Notice to candidates.
<a href="#">12-21-4</a>	Compensation of recount referee and appointive members of board.
<a href="#">12-21-4.1</a>	Mileage allowance for recount board members.
<a href="#">12-21-5</a>	Repealed.
<a href="#">12-21-6</a>	Application of chapter.
<a href="#">12-21-6.1</a>	Code of regulations to govern recounts.
<a href="#">12-21-7</a>	Conditions under which recount made.
<a href="#">12-21-8</a>	Precinct recount on petition by voters of precinct.
<a href="#">12-21-9</a>	Extended time for filing additional precinct recount petitions.
<a href="#">12-21-10</a>	Complete recount on candidate's petition in close local election.
<a href="#">12-21-11</a>	Complete recount on candidate's petition in close election in joint legislative district.
<a href="#">12-21-11.1</a>	Notice to secretary of state of petition filed with county auditor.
<a href="#">12-21-12</a>	Candidate's petition for recount in close state or district election--Notice to county auditors.
<a href="#">12-21-13</a>	Computation of total vote where two or more candidates elected to same office.
<a href="#">12-21-14</a>	Voters' petition for recount on question submitted to entire state--Form of petition--Notice to county auditors.
<a href="#">12-21-15</a>	Petition for recount in close presidential election--Time of filing--Notice to county auditors.

<a href="#"><u>12-21-16</u></a>	Tie vote certified by canvassing board--Automatic recount.
<a href="#"><u>12-21-17</u></a>	Repealed.
<a href="#"><u>12-21-18</u></a>	Chapter not applicable where runoff election required.
<a href="#"><u>12-21-19</u></a>	Joint petition by defeated candidates.
<a href="#"><u>12-21-20</u></a>	Notice to circuit judge of recount petition--Appointment and convening of recount board.
<a href="#"><u>12-21-20.1</u></a>	Appointment of additional recount board.
<a href="#"><u>12-21-21</u></a>	Adjournment by board to another place.
<a href="#"><u>12-21-22</u></a>	Adjournment to permit combining separate recounts of same ballots.
<a href="#"><u>12-21-23</u></a>	Majority vote of county recount board--Quorum.
<a href="#"><u>12-21-24</u></a>	Materials to be provided to recount board--Determination as to whether ballot countable.
<a href="#"><u>12-21-25</u></a>	Recount to proceed expeditiously.
<a href="#"><u>12-21-26</u></a>	Candidates' right to witness recount--Witnesses to recount on submitted question.
<a href="#"><u>12-21-27</u></a>	Segregation and identification of disputed ballots.
<a href="#"><u>12-21-28</u></a>	Identification of ballots disputed in two or more recounts--Substitution of memorandum describing ballot.
<a href="#"><u>12-21-29</u></a>	Opening of segregated ballot for purpose of different recount--Identification and substitution of memorandum if disputed--Resealing.
<a href="#"><u>12-21-30</u></a>	Opening of segregated ballots involved in previous judicial proceedings--Court order to preserve rights.
<a href="#"><u>12-21-31</u></a>	Return and resealing of undisputed ballots--Certification of disputed ballots.
<a href="#"><u>12-21-32</u></a>	Certification of recount result--Contents and execution--Transmittal to secretary of state.
<a href="#"><u>12-21-33</u></a>	Sealing and certification of disputed ballots.
<a href="#"><u>12-21-34</u></a>	Filing and preservation of certificates.
<a href="#"><u>12-21-35</u></a>	Certification of recount result to canvassing board--Recount result in lieu of official returns.
<a href="#"><u>12-21-36</u></a>	Recanvass and corrected abstract of votes in local election.
<a href="#"><u>12-21-37</u></a>	New certificate of election or nomination to local office when result changed by recount.
<a href="#"><u>12-21-38</u></a>	Repealed.
<a href="#"><u>12-21-39</u></a>	Reconvening of state canvassers after recount--Recanvass and corrected abstract.
<a href="#"><u>12-21-40</u></a>	New certificate of election or nomination on change of result by corrected abstract of state returns.
<a href="#"><u>12-21-41</u></a>	Original certificate of nomination or election superseded by certificate issued after recount--Rights of holder.
<a href="#"><u>12-21-42</u></a>	Original determination on submitted question superseded by determination after recount.
<a href="#"><u>12-21-43</u></a>	Tie vote after recount determined by lot--Issuance of certificate.
<a href="#"><u>12-21-44</u></a>	Second recount prohibited--Exception.
<a href="#"><u>12-21-45</u></a>	Court order for second recount--Grounds--Time of filing petition.

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<a href="#"><u>12-21-47</u></a>	Persons entitled to certiorari for review of recount--Time of filing of petition.
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#### **12-21-1. Purpose of chapter--Liberal construction.**

The intent of the provisions of this chapter is to procure a speedy and correct determination of the true and actual count of all ballots cast at an election, which ballots are valid on their face, and all provisions of this chapter shall be liberally construed to that end.

#### **12-21-2. Composition and appointment of county recount board--Oath to act in good faith and with impartiality.**

The county recount board of each county which conducts a recount authorized by this chapter shall consist of a recount referee and two voters of the county to be appointed by the presiding judge of the circuit court for that county, and shall provide for representation of the two political parties with the largest party registration in that county. The recount referee shall be a duly qualified member of the bar of the State of South Dakota and a member of the political party which polled the largest number of votes for Governor in the county in the last gubernatorial election. Prior to serving, each member of the recount board shall take an oath that the member will act in good faith and with impartiality. The state board of elections shall prescribe the oath to be taken.

#### **12-21-3. Notice of appointment and time and place of recount--Notice to candidates.**

The judge shall immediately give notice to the members of the recount board of their appointment to such board, and the time and the place of the recount as prescribed in § 12-21-20, and, immediately after such appointment, he shall notify all candidates for public office subject to recount of the names of the recount referee and the additional members of the recount board, and the time and place of the recount.

**12-21-4. Compensation of recount referee and appointed members of board.**

The recount referee shall receive compensation in the same amount as court appointed counsel and the other two members so appointed to the recount board shall each receive compensation in the amount of twenty-five dollars per day or in an amount equal to the state minimum hourly wage, whichever is the greatest.

**12-21-4.1. Mileage allowance for recount board members.**

The members of the recount board shall receive mileage for the miles traveled each day of the recount from their points of residence in an amount equal to that set by the State Board of Finance for state employees; provided however, that this provision shall not apply to the first ten miles traveled each day.

**12-21-5.** Repealed by SL 1982, ch 28, § 46.

**12-21-6. Application of chapter.**

Except in school and municipal elections and as provided in § 12-21-18, the provisions of this chapter apply to the recount of ballots cast in any election conducted. The provisions of §§ 12-21-47 to 12-21-61, inclusive, apply to all elections.

**12-21-6.1. Code of regulations to govern recounts.**

The State Board of Elections may by rule, in accordance with chapter 1-26, adopt a code of regulations to govern the conduct of recounts.

**12-21-7. Conditions under which recount made.**

Such recount shall be made under any of the conditions described in §§ 12-21-8 to 12-21-15, inclusive.

**12-21-8. Precinct recount on petition by voters of precinct.**

When within ten days after an election any three registered voters of a precinct file with the officer in charge of the election a petition, duly verified by them, setting forth that they believe that the official returns from such precinct as to a specified candidate or as to a specified referred or submitted question are erroneous, the votes of such precinct as to the office or position specified or as to the question specified shall be recounted.

**12-21-9. Extended time for filing additional precinct recount petitions.**

When as to any candidate or any submitted or referred question a petition or petitions are filed under § 12-21-8 as to any particular precinct or precincts within a county, similar petitions as to the same question or candidate may be filed within three days thereafter as to another precinct or precincts within the county, even though the specified period of ten days from the election expires within such three days. But such three-day extension shall only apply as from the filing of the first petition as to any such candidate or any such question.



**12-21-10. Complete recount on candidate's petition in close local election.**

A candidate for any office, position, or nomination which is voted upon only by the voters of one county or part thereof may ask for a recount of the official returns if such candidate is defeated, according to the official returns, by a margin not exceeding two percent of the total vote cast for all candidates for such office, position, or nomination. Any candidate for nonlegislative office shall file a verified petition with the county auditor within three days after the election returns have been canvassed by the official county canvass. Any candidate for legislative office shall file a verified petition with the county auditor within three days after the election returns have been canvassed by the official state canvass. The petition shall state that the candidate believes a recount will change the result of the election and that all of the votes cast for the office, position, or nomination should be recounted. A recount shall then be conducted.

**12-21-11. Complete recount on candidate's petition in close election in joint legislative district.**

If any legislative district comprises more than one county, any candidate for election to or nomination for the Legislature who, according to the official returns, has been defeated by a margin not exceeding two percent of the total vote cast for all candidates for such office may, within three days after completion of the official canvass of the returns, file a petition as set forth in § 12-21-10 with the county auditor of each county. Each county auditor shall then conduct a recount.

**12-21-11.1. Notice to secretary of state of petition filed with county auditor.**

Whenever a petition for recount is filed with the county auditor for an election which has been canvassed by the State Board of Canvassers, the county auditor shall notify the secretary of state of the petition for recount.

**12-21-12. Candidate's petition for recount in close state or district election--Notice to county auditors.**

If any candidate for an office, position, or nomination other than the Legislature is voted upon in more than one county, and has been defeated according to the official returns by a margin which does not exceed one-fourth of one percent of the total vote cast for all candidates for such office, position, or nomination, the candidate may within three days after completion of the official canvass by the State Board of Canvassers file a petition with the secretary of state setting forth that the candidate believes a recount will change the result and that all of the votes cast for the office, position, or nomination should be recounted. The secretary of state shall, by registered or certified mail, notify each county auditor that has precincts included in the petition. Each county auditor shall then conduct a recount.

**12-21-13. Computation of total vote where two or more candidates elected to same office.**

When in any election a voter may vote for two or more candidates for the same office, such as members of the Legislature, the total vote cast for all candidates for such office shall for the purposes of §§ 12-21-10 to 12-21-12, inclusive, be deemed to be two times the average number of votes cast for the candidates officially declared nominated or elected as shown by the official returns.

**12-21-14. Voters' petition for recount on question submitted to entire state--Form of petition--Notice to county auditors.**

Whenever any referred or submitted question is voted upon throughout the state and is determined according to the official canvass by a margin of not exceeding one-fourth of one percent of the total vote cast for and against on such question, there may be filed with the secretary of state within ten days after the completion of the official canvass by the State Board of Canvassers a petition signed by not less than one thousand registered voters of the state, and representing at least five counties of the state, setting forth that petitioners believe a recount will change the result and praying that such recount shall be had in all the precincts involved. Such petition may consist of different petitions bound together and signed and verified substantially as provided by law with regard to petitions to invoke the referendum. Upon the filing of such petition, the secretary of state shall forthwith by registered or certified mail notify each county auditor whose county voted upon the question and such recount shall then be conducted in all of the precincts in each of such counties.

**12-21-15. Petition for recount in close presidential election--Time of filing--Notice to county auditors.**

Whenever according to the official returns as publicly announced and compiled, although not yet officially canvassed, it fairly appears that one group of candidates for presidential electors has been elected over another group of such candidates by a margin not exceeding one-fourth of one percent of the total of votes cast for both such groups, the chairman of the state central committee of the political party which nominated either of such groups, or any two or more candidates of either such group, may file with the secretary of state at any time after the election and prior to the canvass by the State Board of Canvassers, a petition setting forth that in the opinion of the petitioner or petitioners all votes cast for presidential electors should be recounted. Upon the filing of such petition, the secretary of state shall forthwith by registered or certified mail notify each county auditor in the state thereof, and such recount shall then be conducted in all of the precincts in all of such counties.

**12-21-16. Tie vote certified by canvassing board--Automatic recount.**

Whenever by reason of a tie vote found to exist upon the canvass of the original official returns, it is impossible to declare who has been elected or nominated to an office or position, it shall thereupon be the duty of the official board making such canvass to certify said vote to the county auditor where the election involved is confined to or within the limits of a county, and to the secretary of state as to all other elections. Thereupon such county auditor or such secretary of state, as the case may be, shall proceed exactly as if a petition had been duly filed under §§ 12-21-7 to 12-21-15, inclusive, requiring a recount to be made of all votes involved, and such recount shall proceed accordingly. This section shall not apply to school and township elections.

**12-21-17. Repealed by SL 1985, ch 110, § 4.**

**12-21-18. Chapter not applicable where runoff election required.**

The provisions of this chapter shall not apply to any election which must be followed by a second or runoff election by reason of no majority choice, according to the official returns.

**12-21-19. Joint petition by defeated candidates.**

In any case where a voter may vote for two or more persons for the same office, nomination, or position, such as members of the Legislature, delegates to a convention, or presidential electors, and more than one defeated candidate desires such recount, such candidates may at their option file joint instead of individual petitions under this chapter.

**12-21-20. Notice to circuit judge of recount petition--Appointment and convening of recount board.**

The county auditor, immediately on the due filing of any petition for a recount or upon receipt from the secretary of state of notice of such filing with the secretary of state, shall notify in writing, with the seal of the auditor's office, the presiding judge of the circuit court for the auditor's county. The presiding judge shall appoint a board, pursuant to § 12-21-2, for each county in the circuit in which a recount is to be conducted. The presiding judge may appoint the board anytime within thirty days prior to a primary or general election or upon the filing of the petition for recount. The board shall then convene in the office of the county auditor on the second Monday at nine a.m. following the filing of the petition. However, if the second Monday is a legal holiday, the board shall convene at nine a.m. of the day following. The county auditor shall provide the recount board with laws, rules, and forms to use in conducting the recount. The board shall then proceed with the recount.

**12-21-20.1. Appointment of additional recount board.**

If the presiding circuit court judge in consultation with the county auditor determines that a single recount board in a county is unlikely to complete the recount in five working days, the presiding judge may appoint more than one recount board for that county. The presiding judge shall determine which precincts each recount board shall be appointed to recount.

**12-21-21. Adjournment by board to another place.**

Any county recount board, after convening at the time and place provided by this chapter, may adjourn its proceedings to any other more convenient public place at the county seat.

**12-21-22. Adjournment to permit combining separate recounts of same ballots.**

Whenever a county recount board is required to make two or more different recounts of the same ballots, such board may, by written order, filed as a public record in the office of the county auditor, adjourn any recount, other than a recount of votes for presidential electors, so that all such recounts may be at the same time.

**12-21-23. Majority vote of county recount board--Quorum.**

All questions arising on such recount shall be determined by majority vote of such board, and at least two members of such board shall be present at all times. When only two members are present, the presence of the third member may be required for the purpose of determining any disputed question on which the two members present are unable to agree.

**12-21-24. Materials to be provided to recount board--Determination as to whether ballot countable.**

The county auditor shall provide the pollbooks, automatic tabulating system election night print outs, sealed ballot boxes, any provisional ballots which were determined countable pursuant to § 12-20-13.2, any uncounted provisional ballots, and any unopened absentee ballot envelopes to the recount board. The recount board is authorized to make a determination whether any provisional ballots or absentee ballots which were determined not to be countable, shall be counted, and those votes shall be added to the recount tally.

**12-21-25. Recount to proceed expeditiously.**

The recount shall proceed as expeditiously as reasonably possible until completed.

**12-21-26. Candidates' right to witness recount--Witnesses to recount on submitted question.**

Each candidate for any office, nomination, or position involved in any such recount may appear, personally or by a representative, and shall have full opportunity to witness the opening of all ballot boxes and the count of all ballots. If the recount is upon a referred or submitted question, any registered voter of the state favoring either side as to such question may be present and represent such side, and if more than one person favoring such side is present, they shall designate one of their number to represent such side, who shall have full opportunity to witness the opening of all ballot boxes and the recount of all ballots.

**12-21-27. Segregation and identification of disputed ballots.**

If any such candidate or any such representative, protests the ruling of such board as to any ballot, such ballot shall be adequately identified by the board as an exhibit and segregated by the board as a disputed ballot.

**12-21-28. Identification of ballots disputed in two or more recounts--Substitution of memorandum describing ballot.**

When upon consolidated recounts as described by § 12-21-22 it becomes necessary, under the provisions of this chapter, to identify and segregate the same ballot as disputed in two or more such recounts, such board shall determine and designate the recount as to which such ballot shall be segregated and sealed, but shall also identify it as an exhibit as to each of the other recounts, and in the sealed envelope in which disputed ballots are segregated in each of the other recounts, shall substitute in lieu of such ballot a memorandum briefly describing such ballot as to the question which is raised with reference thereto, how it has been identified as an exhibit, and the identification of the envelope in which it is sealed.

**12-21-29. Opening of segregated ballot for purpose of different recount--Identification and substitution of memorandum if disputed--Resealing.**

When in any recount, ballots have, in a previous recount, been identified and sealed as disputed but are still in the custody of the county auditor, the circuit court for the county shall, upon application to the county auditor, order the opening of such sealed envelopes solely for the purposes of the recount, and such envelopes may then be opened by such board in the presence of all persons entitled

to appear at such recount and the ballots in such envelopes recounted. If it becomes necessary to identify any such ballot as disputed, it shall be marked as an exhibit, and in the sealed envelope in which disputed ballots are segregated in the pending recount, such board shall substitute in lieu of such ballot a memorandum briefly describing such ballot as to the question that is raised with reference thereto, how it has been identified as an exhibit and the identification of the envelope in which it was sealed in the previous recount. After such ballots have been recounted, they shall be resealed in the same identical envelope from which they were taken.

**12-21-30. Opening of segregated ballots involved in previous judicial proceedings--Court order to preserve rights.**

When any such sealed ballots have been certified to any court in judicial proceedings, the court which has custody thereof shall, on application of such board or any person interested in a pending recount, make such order as may be necessary to permit a recount of such ballots, and to preserve the rights of all persons interested with regard to all questions and to safeguard the rights of the parties in the pending proceeding.

**12-21-31. Return and resealing of undisputed ballots--Certification of disputed ballots.**

At the conclusion of the recount of each precinct the undisputed ballots shall be returned to the ballot box and resealed, and the disputed ballots, if any, shall be certified pursuant to § 12-21-33.

**12-21-32. Certification of recount result--Contents and execution--Transmittal to secretary of state.**

Upon the conclusion of the recount of all ballots to be recounted the county recount board shall certify the result. The certificate shall be signed by at least two members of the board, attested under seal by the county auditor. The certificate shall set forth in substance the proceedings of the board and appearances of any candidates or representatives, shall adequately designate each precinct recounted, the vote of each precinct according to the official canvass previously made as to the office, nomination, position, or question involved, and the correct vote of such precinct as to the office, nomination, position, or question as determined by the board through the recount. The certificate shall be made in duplicate, and either the original or duplicate original shall be transmitted to the secretary of state by mail in any recount affecting a certificate to be issued by the secretary of state.

**12-21-33. Sealing and certification of disputed ballots.**

Disputed ballots shall be securely sealed in a separate envelope for each precinct. The county recount board shall also make a separate and distinct certificate, signed by at least two members of such board and attested by the county auditor under seal, setting forth the number of such disputed ballots as to each precinct, and adequately identifying the envelope in which the same are sealed.

**12-21-34. Filing and preservation of certificates.**

The certificate as to the result of the recount and the certificate as to disputed ballots shall be filed and preserved by the county auditor as public records.

**12-21-35. Certification of recount result to canvassing board--Recount result in lieu of official returns.**

Whenever a recount is completed by the county recount board prior to the official canvass of the vote as to the office, position, nomination, or question, involved in such recount, the county recount board shall forthwith upon such completion, certify the result directly to the official, board, or tribunal making such canvass, and the result determined on such recount shall be included in the official canvass in lieu of the result as determined by the official returns as to all precincts involved in the recount.

**12-21-36. Recanvass and corrected abstract of votes in local election.**

In the case of a recount as to any local election, it shall be the duty of the county recount board forthwith to recanvass the official returns as corrected by the certificate showing the result of the recount, and to make a new and corrected abstract of the votes cast as to such office, nomination, position, or question, which corrected abstract shall be signed by at least two members of said board and filed as a public record in the office of the county auditor and a certified copy of the certificate shall be transmitted to the officer in charge of that election.

**12-21-37. New certificate of election or nomination to local office when result changed by recount.**

If such corrected abstract by the county recount board shows no change in the result as previously found on the official returns, no further action shall be taken. But if there is a change in such result, a new certificate of election or nomination shall be issued to each candidate found to have been elected or nominated as the case may be, which certificate shall be signed by at least two members of such board, and shall set forth the nomination or election of such person as to such office or position.

**12-21-38. Repealed by SL 1974, ch 118, § 200**

**12-21-39. Reconvening of state canvassers after recount--Recanvass and corrected abstract.**

The secretary of state shall file all certificates involved in the recount as to any office, nomination, position, or question that have been received from the county recount boards. The secretary of state shall fix a time and place as early as reasonably possible for reconvening the State Board of Canvassers and shall notify the members of the State Board of Canvassers. The State Board of Canvassers shall reconvene at the time and place so designated and recanvass the official returns as to the office, nomination, or position, as corrected by the certificates. The State Board of Canvassers shall make a new and corrected abstract of the votes cast and declare the person elected or nominated as the case may be or the determination of any question. The corrected abstract shall be signed by the members of the State Board of Canvassers in their official capacities and shall have the great seal of the state affixed. The corrected abstract shall be filed by the secretary of state.

**12-21-40. New certificate of election or nomination on change of result by corrected abstract of state returns.**

If such corrected abstract by the State Board of Canvassers shows no change in the result previously found on the official returns, no further action shall be taken. If there is a change in such result, a new certificate of election or nomination shall be issued in the same manner and by the same

authority as the certificate of election or nomination previously issued to each candidate found to have been elected or nominated as the case may be. Such certificate shall set forth the fact of the nomination or election of such person to such office or position, and that the certificate supersedes the certificate previously issued, which shall be adequately identified.

**12-21-41. Original certificate of nomination or election superseded by certificate issued after recount--Rights of holder.**

Any certificate of nomination or election issued under the provisions of this chapter shall have the effect of and shall be recognized as superseding and rendering null and void any certificate of election or nomination previously issued which shall be adequately identified which is inconsistent with such new certificate, and the holder of any certificate of nomination or election issued under this chapter shall have the same identical rights as if he held the original certificate of nomination or election and no recount had been had.

**12-21-42. Original determination on submitted question superseded by determination after recount.**

The determination, as provided in this chapter, of a corrected and changed result upon a recount as to any referred or submitted question shall have the effect of superseding and rendering null and void the result as found upon the original canvass.

**12-21-43. Tie vote after recount determined by lot--Issuance of certificate.**

When a tie vote between candidates is found to exist on the basis of any such recount, and by reason of such tie vote it cannot be determined who has been nominated or elected, it shall be the duty of the authority charged by law with the responsibility of issuing the certificate of election or nomination to fix a time and place for the drawing of lots by such candidates involved in such tie vote, giving reasonable notice of such time and place to each of such candidates. Each such candidate may appear at the time and place designated either in person or by a representative, whereupon in the presence of such authority charged with the responsibility of issuing the certificate of nomination or election, the candidate or candidates entitled to the certificate or certificates of nomination or election shall be determined by drawing of lots in the manner directed by such authority, and the certificate or certificates of nomination or election shall be issued accordingly.

**12-21-44. Second recount prohibited--Exception.**

Whenever the ballots cast in any precinct have been recounted as to any office, nomination, petition, or question, such ballots shall not thereafter, except as specifically provided in § 12-21-45, be recounted as to the same office, nomination, position, or question.

**12-21-45. Court order for second recount--Grounds--Time of filing petition.**

At any time while any recount is pending before a county recount board, the circuit court for such county, on petition of any interested person, and upon due notice to such board, if satisfied that such board has acted fraudulently or arbitrarily and in disregard of law, and in such a way as likely to reach an unfair result, may order any ballots already recounted to be recounted a second time. Such

petition, however, must be filed prior to final certification of the recount, and to give opportunity for hearing and decision, the court may enjoin such certification for a period not exceeding three days.

**12-21-46. Court removal and replacement of recount board member not acting in good faith.**

When satisfied on any such petition that the conduct of such board, or any member thereof, has been fraudulent, or deliberately and willfully in disregard of law, and not in good faith, the court may remove such member or members guilty of such conduct and appoint in the place of such member or members removed any registered voter or voters of the county who shall thereupon assume the duties and responsibilities of such removed member or members for the purpose of such recount.

**12-21-47. Persons entitled to certiorari for review of recount--Time of filing of petition.**

Whenever any candidate is aggrieved by the final determination made as a result of any recount, he may have the proceedings of such recount board reviewed upon certiorari as provided by this chapter. Such review may also be obtained as to any submitted or referred question by any voter who was entitled to vote thereon, but only with the approval of the court in which such review is asked, or of a judge of such court, which approval must be endorsed upon the petition before it is filed. The petition for the writ must be filed within five days after the filing of the recount certificate with the secretary of state or county auditor.

**12-21-48. Original jurisdiction of certiorari proceedings.**

Original jurisdiction of such certiorari proceeding shall be as follows:

- (1) Where the same involves a submitted or referred question voted upon in more than one county, or the nomination or election of presidential electors, United States senator, representative in Congress, member of the Legislature, or any state or judicial officer, in the Supreme Court;
- (2) In all other cases in a circuit court of a county which includes the locality where the election or some part thereof was conducted.

**12-21-49. Form and contents of petition for certiorari.**

The petition for the writ, if involving a nomination or election as to any office or position, shall denominate the candidate seeking the review as plaintiff, and shall name the candidate or candidates declared elected as defendants. If the petition seeks a review as to a determination of any submitted or referred question, it shall be entitled: "In the matter of petition for writ of certiorari as to determination of election on (specifying the question submitted or referred)." In any case the petition shall concisely set forth the nature of the election involved, the result thereof as pronounced by the official returns, the basis for and proceedings had upon the recount, the respects in which any county recount board, or other authority, is claimed to have exceeded its jurisdiction, and a brief summarized statement of the particulars in which it is claimed any county recount board, or other authority, has misapplied the law in the determination of questions concerning disputed ballots.



**12-21-50. Issuance of writ of certiorari--Officials to whom addressed--Contents.**

If the court concludes that the facts set forth in the petition, if true, are sufficient to justify the issuance of the writ, the same shall be issued. It shall be addressed to each county recount board, and to each other authority which the plaintiff claims to have exceeded its jurisdiction, including misapplication of the law in determination of questions concerning disputed ballots, and shall command each such board or authority at or before a time specified to certify to the court all its records and proceedings with reference to such matter. If questions as to validity of any disputed ballots are involved, the writ shall command the county auditor having custody thereof to return at the time designated the sealed envelopes containing the disputed ballots in question.

**12-21-51. Service of writ of certiorari--Persons on whom served.**

Such writ shall forthwith be served personally, or by registered or certified mail, on each county auditor as to any county where the county recount board or such auditor is claimed to have exceeded jurisdiction, and in the same manner upon the secretary of state in case the secretary of state, or the State Board of Canvassers, is claimed to have exceeded jurisdiction. Only one writ need be issued, and shall be sufficient irrespective of the number of officials, boards, or tribunals from which certification of records or proceedings may be required. The writ and petition shall also be served forthwith upon all defendants named in case the proceeding involves election or nomination to any office or position, and upon the attorney general, in case the proceeding involves a submitted or referred question voted upon in more than one county. In any case where the proceeding involves the vote upon a submitted or referred question within a single county, the court shall in the writ direct additional service of the writ and petition on such officer or officers, or person or persons, whom the court believes might be interested in resisting the relief asked.

**12-21-52. Intervention in certiorari involving submitted question.**

In any such proceeding involving a submitted or referred question, the court may upon good cause shown, either ex parte or otherwise, permit any officer or person desiring to be heard to intervene, either as a party plaintiff or party defendant.

**12-21-53. Answer to petition for certiorari--Joint or several answer.**

On or before the return day of the writ, the defendant must serve and file his answer to the petition, and if there are several defendants, they may answer jointly or severally, at their option. In the case of a proceeding involving a vote on a referred or submitted question, any officer or person, on whom the writ is served, may interpose an answer, or several such officers or persons may unite in a single answer.

**12-21-54. Defenses set forth in answer to certiorari--New allegations--Petition for additional writ.**

All defenses, either of fact or of law, must be set forth in the answer and no other pleading in response to the petition shall be permitted. Such answer may also allege matters showing error by any county recount board or boards, or other official, tribunal, or authority not covered by such petition, and pray for an additional writ for certification of additional proceedings and records relative thereto, in

which event such additional writ may be granted in the same manner, and with the same procedure and effect as the original writ.

**12-21-55. Insufficient certification--Further certification required.**

When any certification is insufficient to show adequately the proceedings had, the court may by order require further certification of records and proceedings.

**12-21-56. Hearing on certiorari--Conference to narrow issues.**

Upon the returns made as required by the writ, the court shall hear the parties, and if further hearing is deemed necessary to determine the case, the court may make such order as deemed advisable fixing such further procedure as may be conducive to expeditious and just determination of the proceeding, including a requirement for a conference of all parties appearing and their attorneys designed to narrow the issues inasmuch as reasonably possible through eliminating questions as to ballots, when such questions are not seriously urged, and the offsetting against each other of ballots which are marked for opposing candidates involved, or on opposite sides of the question, and which present identical issues as to validity, and through segregation of ballots remaining disputed into classes or groups where different classes or groups of ballots present identical questions.

**12-21-57. Scope of review on certiorari--Correction of errors.**

In such proceedings the court may review completely all of the proceedings had relative to such recount as shown by such certifications, and correct any errors made in the determination of questions as to validity of ballots, and in computation of returns, and any errors which may be manifest from such certifications.

**12-21-58. Procedure as in other cases of certiorari.**

Except as otherwise specifically provided and so far as applicable the practice and procedure shall be the same as in other cases of review on certiorari.

**12-21-59. Judgment on certiorari.**

The judgment rendered by the court shall be such as the court deems required by the law as applied to the facts disclosed by the record presented, and shall pronounce what the court deems the correct result of the election involved as shown by the record.

**12-21-60. Right of appeal to Supreme Court from judgment on certiorari.**

As to any such judgment of a circuit court any party to the proceeding aggrieved thereby may appeal to the Supreme Court in the manner provided by § 12-21-61. For the purposes of this section, any person or official who has been permitted to appear in the proceeding shall be deemed a party thereto.

**12-21-61. Procedure on appeal to Supreme Court--Provisions to secure speedy determination.**

Such appeals shall be taken and perfected in the same manner as appeals from other judgments, except:

- (1) Such appeal must be taken within twenty days of the entry of such judgment;
- (2) Forthwith upon such appeal the entire record shall be certified by the clerk of the circuit court and transmitted to the clerk of the Supreme Court;
- (3) A stay of proceedings shall be within the discretion of the circuit court, subject to review by the Supreme Court, and shall be granted only upon adequate bond with sufficient security for payment to the respondent of all damages of any kind whatever resulting from the delay, and the court shall determine the terms of the bond so as adequately to protect the respondent from such damage;
- (4) The Supreme Court may on its own motion, or on motion of any party, make such order as it deems advisable to bring about a speedy determination of the appeal, including shortening of the time for filing briefs, dispensing with printing briefs, or dispensing entirely with briefs; and assigning date for oral argument.

## Administrative Rules

**5:02:19:01. Reconvening of a recount.** The recount board may recess from time to time, however, the recount shall not reconvene nor shall the ballots be handled until the appointed time for reconvening. Notice of time and place of meeting shall be given to all three members of the recount board.

**Source:** 5 SDR 31, effective November 1, 1978.

**General Authority:** SDCL 12-1-9, 12-21-6.1.

**Law Implemented:** SDCL 12-21-21, 12-21-25.

**5:02:19:02. Staff for recount board.** The county auditor shall be responsible for providing administrative support and staff for the recount board.

**Source:** 5 SDR 31, effective November 1, 1978; 6 SDR 25, effective September 24, 1979.

**General Authority:** SDCL 12-1-9, 12-21-6.1.

**Law Implemented:** SDCL 12-21-25.

**5:02:19:03. Precautions to insure against tampering.** The county auditor shall take precautions to insure against tampering with the ballots.

**Source:** 5 SDR 31, effective November 1, 1978.

**General Authority:** SDCL 12-1-9, 12-21-6.1.

**Law Implemented:** SDCL 12-21-24, 12-21-27, 12-21-28, 12-21-29, 12-21-30, 12-21-31, 12-21-33.

**5:02:19:05. Candidate's petition for recount.** Legislative and local candidates shall file the petition for recount with the applicable county auditors. All other candidates shall file the petition with the secretary of state. A candidate's petition for recount shall be in the following form:

**CANDIDATE'S PETITION FOR RECOUNT**

I, \_\_\_\_\_, candidate for the office of \_\_\_\_\_, believe that a recount will change the result of the election held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and I petition for a recount of all votes cast for this office in every precinct which has not previously been recounted.

(Signed) \_\_\_\_\_

STATE OF SOUTH DAKOTA     )

)   SS     VERIFICATION

COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, under oath, state that I read and signed the foregoing petition and know its contents and that, to the best of my knowledge and belief, the statement is true.

(Signed) \_\_\_\_\_

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Seal)

\_\_\_\_\_  
Officer Administering Oath

My Commission Expires \_\_\_\_\_

\_\_\_\_\_  
Title of Officer Administering Oath

**Source:** 6 SDR 25, effective September 24, 1979; 16 SDR 20, effective August 10, 1989.

**General Authority:** SDCL 12-1-9.

**Law Implemented:** SDCL 12-21-10, 12-21-11, 12-21-12.

**5:02:19:06. Precinct voters' petition for recount.** The precinct voters' petition for recount shall be filed with the person in charge of the election and shall be in the following form:

**PRECINCT VOTERS' PETITION FOR RECOUNT**

WE, THE UNDERSIGNED qualified voters of the \_\_\_\_\_ precinct in the County of \_\_\_\_\_, believe that the official returns from that precinct are erroneous for the following specified candidate or question, \_\_\_\_\_, and we petition for a recount of all votes cast in that precinct for the office or question for the election held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Signed)\_\_\_\_\_

(Signed)\_\_\_\_\_

(Signed)\_\_\_\_\_

STATE OF SOUTH DAKOTA     )

)   SS     VERIFICATION

COUNTY OF \_\_\_\_\_ )

We, under oath, state that we read and signed the foregoing petition and know its contents and that, to the best of our knowledge and belief, the statement is true.

(Signed)\_\_\_\_\_

(Signed)\_\_\_\_\_

(Signed)\_\_\_\_\_

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Seal)

\_\_\_\_\_  
Officer Administering Oath

My Commission Expires \_\_\_\_\_

\_\_\_\_\_  
Title of Officer Administering Oath

**Source:** 6 SDR 25, effective September 24, 1979; 16 SDR 20, effective August 10, 1989.

**General Authority:** SDCL 12-1-9.

**Law Implemented:** SDCL 12-21-8.

**5:02:19:07**. **Voters' petition for recount on questions submitted to the entire state.** The voters' petition for recount on questions submitted to the entire state shall be filed with the secretary of state after being signed by not less than one thousand voters from at least five different counties and shall be in the following form:

**VOTERS' PETITION FOR RECOUNT  
ON QUESTIONS SUBMITTED TO THE ENTIRE STATE**

WE, THE UNDERSIGNED qualified voters of the state of South Dakota, believe that a recount will change the result of the General Election held on the \_\_\_\_ day of November, 20\_\_\_\_, for the following question: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

and we petition for a recount of all votes cast for or against this question in every precinct which has not previously been recounted.

\_\_\_\_\_

The balance of the petition form is as prescribed in § 5:02:08:00.03.

**Source:** 6 SDR 25, effective September 24, 1979; 16 SDR 20, effective August 10, 1989.

**General Authority:** SDCL 12-1-9.

**Law Implemented:** SDCL 12-21-14.

**5:02:19:08. Certificate of recount.** The Certificate of Recount shall be in the following form:

STATE OF SOUTH DAKOTA                    )  
   ) SS CERTIFICATE OF RECOUNT  
COUNTY OF \_\_\_\_\_ )

WE, THE UNDERSIGNED members of the \_\_\_\_\_ (insert jurisdiction) recount board, do hereby certify the results of the recount for the following specified candidates or question \_\_\_\_\_ for the election held on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. We completed the recount on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

<u>PRECINCT NAME</u>	<u>CANDIDATE NAME OR YES VOTES</u>		<u>CANDIDATE NAME OR NO VOTES</u>	
	<u>OFFICIAL CANVASS</u>	<u>RECOUNT</u>	<u>OFFICIAL CANVASS</u>	<u>RECOUNT</u>
TOTALS				

The following is a brief description of the proceedings of this recount board:

The following is a list of candidates or representatives present during this recount:

Signed by at least two members of the recount board:

Referee or Member of Recount Board

Recount Board Member

Recount Board Member

Attested under SEAL by the \_\_\_\_\_ County Auditor:

Attest not necessary for municipal or school recounts.

This certificate has been made in duplicate and either the original or duplicate will be filed with the person in charge of the election. The other certificate shall be sent to the secretary of state by registered or certified mail or delivered by hand when the recount involves candidates or a question canvassed by the State Board of Canvassers.

**Source:** 6 SDR 25, effective September 24, 1979; 28 SDR 99, effective January 17, 2002.

**General Authority:** SDCL [12-1-9\(4\)](#), [12-21-6.1](#).

**Law Implemented:** SDCL 12-21-32.

**5:02:19:09. Certificate of disputed ballots.** The Certificate of Disputed Ballots shall be in the following form:

[illegible]

WE, THE UNDERSIGNED members of the \_\_\_\_\_ (insert jurisdiction) recount board, do hereby certify this summarization of the rulings made by this recount board and the objections to those rulings as to the ballots cast for the following specified candidates or question \_\_\_\_\_ for the election held on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. We completed the recount on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Exhibit Number	Ward and/or Precinct	Counted or Not Counted	Grounds for Dispute	Party Disputing

Signed by at least two members of the recount board:

Referee or Member of Recount Board

Recount Board Member

Recount Board Member

Attested to under SEAL by the County Auditor:

Attest not necessary for municipal or school recounts.

This certificate will be filed with the person in charge of the election along with the disputed ballots and either the original or duplicate certificate of recount.

**Source:** 6 SDR 25, effective September 24, 1979; 28 SDR 99, effective January 17, 2002.

**General Authority:** SDCL 12-1-9(4), 12-21-6.1.

**Law Implemented:** SDCL 12-21-33, 12-21-34.



**5:02:19:10. Voters' petition for recount in close municipal or school ballot question election.**

The voters' petition for recount in a close municipal or school ballot question election shall be filed with the person in charge of the election and shall be in the following form:

**VOTERS' PETITION FOR RECOUNT IN MUNICIPAL OR SCHOOL BALLOT QUESTION ELECTION**

WE, THE UNDERSIGNED qualified voters of the \_\_\_\_\_ School District or the municipality of \_\_\_\_\_, believe that a recount will change the outcome of the official returns for the following question, \_\_\_\_\_, and we petition for a recount of all votes cast for the question at the election held on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

(Signed) \_\_\_\_\_

(Signed) \_\_\_\_\_

(Signed) \_\_\_\_\_

STATE OF SOUTH DAKOTA)

) ss. VERIFICATION

COUNTY OF \_\_\_\_\_)

We, under oath, state that we read and signed the foregoing petition and know its contents and that, to the best of our knowledge and belief, the statement is true.

(Signed) \_\_\_\_\_

(Signed) \_\_\_\_\_

(Signed) \_\_\_\_\_

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Seal)

\_\_\_\_\_  
Officer Administering Oath

My Commission Expires \_\_\_\_\_

\_\_\_\_\_  
Title of Officer Administering Oath

**Source:** 28 SDR 99, effective January 17, 2002.

**General Authority:** SDCL 12-1-9(4).

**Law Implemented:** SDCL 9-13-27.4, 13-7-19.3.

**5:02:19:11. Oath of recount board.** Before performing recount duties, each recount board member shall take an oath in the following form:

I, A.B., do solemnly swear (or affirm) that I will perform the duties of recount board member according to law and the best of my ability and that I will act in an impartial manner in conducting the recount about to be held.

**Source:** 35 SDR 48, effective September 8, 2008.

**General Authority:** SDCL 12-1-9(10).

**Law Implemented:** SDCL 12-21-2.

**5:02:09:05. Recount procedure.** The following procedure shall be used in recounting any election counted by an automatic tabulating system:

(1) If a discrepancy in the number of ballots for a precinct is discovered during ballot tabulation and is not resolved at that time, the county auditor shall make every effort to resolve the discrepancy following the official county canvass and prior to the convening of the recount board;

(2) The recount board shall first examine each ballot to determine if the official stamp has been placed on the ballot and may not count any vote on an unstamped ballot;

(3) If any discrepancy remains after subdivisions (1) and (2) have been completed and the total number of ballots in a precinct exceeds the number of names in the pollbook, the ballots shall be placed in a box and the recount board shall draw from the box the number of ballots that is equal to the excess and place these in an envelope labeled "ballots drawn by recount board to justify totals";

(4) The recount board shall review ballots for proper marking procedure according to the voting instructions. Each ballot marked in a manner other than as provided in the instructions to voter and which may not be counted by the machine shall be hand counted or duplicated in the manner used by a resolution board and the duplicate counted by machine. The recount board shall determine the voter's intent based on the standards found in ARSD 5:02:09:22;

(5) The recount board shall review each ballot to determine if there are any write-in votes. Any write-in vote may not be counted but all other votes for which the voter's intent can be determined shall be counted;

(6) The recount board shall examine the ballots reviewed by the resolution board to determine the correctness of the initial rejection or duplication. The recount board shall rule on whether each mark is to be counted or rejected according to § 5:02:09:22;

(7) The recount board shall test the automatic tabulating equipment according to § 5:02:09:01.02. The board may conduct additional tests of the equipment including a comparison with hand-counted results from a precinct;

(8) The recount board shall count the ballots with the automatic tabulating equipment. A hand count may be conducted to verify the accuracy of the count by the automatic tabulating equipment. If any discrepancy is found, the discrepancy shall be resolved before the recount is concluded. If any vote cannot be accurately counted by the automatic tabulating equipment but can be hand counted, the hand count tally of that vote shall be added to the count by the automatic tabulating equipment;

(9) The recount board shall complete the Certificate of Disputed Ballot as provided in § 5:02:19:09;

(10) Any question arising on the recount shall be determined by majority vote of the recount board; and

(11) The recount board shall certify the new returns as printed by the automatic tabulating equipment or as hand counted as the "Official Returns" for the election by completing the Certificate of Recount as provided in § 5:02:19:08. The Certificate of Recount shall be filed with the person in charge of the election and shall constitute the final returns for the election in that jurisdiction. If the recount involved an election canvassed by the State Board of Canvassers a duplicate original of the Certificate of Recount shall be forwarded to the secretary of state to be incorporated into the statewide totals as provided by SDCL 12-21-39.

**Source:** 3 SDR 69, effective April 10, 1977; 6 SDR 25, effective September 24, 1979; 21 SDR 77, effective October 24, 1994; 26 SDR 168, effective June 25, 2000; 28 SDR 99, effective January 17, 2002; 29 SDR 177, effective July 2, 2003; 33 SDR 230, effective July 1, 2007; 36 SDR 112, effective January 11, 2010.

**General Authority:** SDCL 12-17B-7, 12-17B-17(4).

**Law Implemented:** SDCL 12-17B-7, 12-17B-16.

**5:02:09:22. Counting imperfectly marked optical scan ballots.** A mark that touches the oval on an optical scan ballot shall be counted as a vote; any mark that does not touch the oval and is not in the oval may not be counted as a vote.

**Source:** 28 SDR 99, effective January 17, 2002; 32 SDR 109, effective December 26, 2005; 33 SDR 230, effective July 1, 2007.

**General Authority:** SDCL 12-1-9(4).

**Law Implemented:** SDCL 12-1-9(4).